ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Policy and Rules Concerning the Interstate, Interexchange Marketplace	)	
Implementation of Section 254 (g) of the Communications Act of 1934, as amended	)	CC Docket No. 96-61

The Rural Telephone Coalition (RTC) Opposition to Petitions for Reconsideration

The Rural Telephone Coalition (RTC) responds here to petitions for reconsideration and clarification in the above-captioned proceeding. The RTC is composed of three trade associations of small and rural local exchange carriers (LECs), the National Rural Telecom Association (NRTA), the National Telephone Cooperative Association (NTCA) and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO). The Coalition associations together represent more than 850 rural telephone companies in 46 states. The Coalition has participated actively before Congress as it considered and adopted the Telecommunications Act of 1996[1] and in the Commission's proceedings leading to the adoption of Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61 (released August 7, 1996) (Order).

Implementation of the rate averaging and rate integration requirements in section 252(g) in accordance with the statute and Congressional intent is a high priority issue for rural

[1]Pub. L. No. 104-104, 110 Stat. 56, to be codified at 47 U.S.C. §§ 151 et seq. Citations herein assume such codification.

telephone companies. The RTC will focus first and primarily on AT&T's request that the Commission forbear from enforcing the statutory geographic averaging requirements when regional competitors are involved and allow much more extensive periods for "promotional" offerings. We then briefly comment on issues raised by GTE Service Corporation (GTE) and US West, Inc. (US West) regarding the obligations of affiliates and parent companies of interexchange carriers.[2]

The Commission Should Not "Forbear" from Enforcing Section 254 (b) and (g) to Allow Regional Geographic Deaveraging

AT&T urges the Commission to allow regional interexchange deaveraging to help it compete with regional interexchange providers. It contends that the competitive situation when a nationwide interexchange provider faces a regional provider somehow justifies forbearance because it would improve the competitive posture of nationwide carriers. AT&T fails to support its forbearance request or to justify any further deviation from implementation of the Act as it was enacted.

AT&T's examples (pp. 2-6) in purported justification of regional deaveraging demonstrate that its real complaint is that some independent LECs can (a) provide "one stop shopping" and consolidated billing for local and long distance services and (b) appeal to customers' familiarity with their "local" carrier. However, AT&T itself has said that it intends to provide local service, and, the RTC understands, has already sought statewide local authority in numerous states. AT&T can make or retain billing arrangements with existing

[2]Citations to petitions for reconsideration or clarification will identify the party by name, abbreviation or acronym.

ILECs for inclusion of its charges in the ILEC's local bill. AT&T also has undeniable nationwide name recognition and familiarity to customers. Its "handicap" is by no means self-evident,[3] despite its contrary assertions (p. 2). That different competitors bring different strengths to the marketplace is not sufficient reason for embarking upon administrative repeal of the Act's mandated geographic interexchange rate averaging both for rural and urban routes and calls between states served by a carrier. Congress enacted the rate averaging and rate integration requirements with full knowledge that the RBOCs would soon provide in-region interexchange services, since the Act makes that possible. Moreover, the Conference Report specifies (p. 132) that the intent is

> to ensure that subscribers in rural and high cost areas throughout the nation are able to continue to receive both intrastate and interstate interexchange service at rates no higher than those paid by urban subscribers.

The Report adds (ibid.) that even exceptions to the averaging mandate that meet the forbearance test must "be generally available in the area served by a particular provider."[4] One looks in vain for any exception that would allow forbearance to deaverage regionally simply because not all interexchange carriers serve nationwide. Indeed, AT&T fares better competitively under the Act because its nationwide competitors now must also average their rates geographically. In the past, only AT&T (for interstate services) and the BOCs (for

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[3]AT&T claims its need for relief is "so obvious" that even "'generalized assertions'" would justify regional deaveraging relief.

[4]The RTC agrees with the State of Hawaii (see, p. 2) that any forbearance allowed as an exception must be narrowly limited, although the RTC believes that exceptions to either geographic averaging or rate integration must be narrow. The RTC also agrees with the State of Hawaii (pp. 6-8) that Congress did not give the Commission carte blanche for deaveraging under contracts, tariff 12 offerings, or other exceptions.

intrastate services) were subject to an area-wide averaging requirement.

The national carriers present their own "unique competitive challenges" for regional providers. For example, they can provide nationwide rates, promotions and service packages, using their nationwide customer base to create the "critical mass" for an offering, rather than having to make each offering profitable from a smaller regional customer base. That ability will be enhanced to include nationwide "one stop shopping" as AT&T gets into the local exchange business. Hence, competition does not require that all competitors offer the same choices or be relieved of averaging, as AT&T seems to assume.

AT&T has not -- and cannot -- make the statutory case for forbearance with respect to regional rate deaveraging. To forbear, the Commission must find that enforcement is not necessary either to keep rates "just," "reasonable" and "non-discriminatory" or to protect consumers and that forbearance is in the public interest.[5] AT&T's petition proves none of these prerequisites.

First, the averaging and integration mandate is part of Section 254, the Act's universal service provision. Thus, it must be enforced consistent with that section's foundation principles, including "reasonably comparable" rates and services in rural and urban areas. Letting AT&T deaverage rates wherever regional access charges are lower than the national average or whenever local marketing practices allow a "local" competitor to differentiate itself from AT&T would abandon the Act's bedrock principle of "comparability," as well as the specific geographic averaging requirements of section 254 (g)(1)-(2).

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[5]47 U.S.C. § 160.

AT&T's assertion (pp. 7-8) that consumers will not be harmed because "geographically averaged rates" will be available wherever there is no regional competition makes a mockery of the Act's averaging and comparability requirements. Section 254 (b) and (g) flesh out very specifically what constitutes "just", "reasonable" and "non-discriminatory" for interexchange services and what interexchange consumers need -- geographic rate averaging, rate integration and urban-rural comparability. To establish that enforcement is not needed, AT&T would have to show that the marketplace will ensure geographic rate averaging and rate integration without section 254 (g). The bare assertion that different rates are "just", "reasonable" and "non-discriminatory" so long as some areas remain averaged is wrong on its face. The areas with rates at the nationwide "average" that remain after all "regional" competition has been met with regional deaveraging will be the highest cost areas, often served only by nationwide providers, or only by AT&T. Their disparate rates will put their customers at a disadvantage compared to urban-centered regional pricing. AT&T cannot rationally argue (p. 7) that "geographically specific rates that are lower than their nationwide rates" do not treat consumers, states and high cost areas differently or are equivalent to the geographic averaging Congress intended all customers to enjoy. It is no less discriminatory to high cost areas and customers -- and no more lawful under the anti-deaveraging provision -- that deaveraging results from lowering rates for regional competition rather than increasing rural rates. It is the inequality (i.e. deaveraging) that matters under the Act.

The Commission Should Not Allow Expansive "Promotional" Offers

The Commission should also refrain from allowing AT&T to extend and multiply its "promotional" offerings. Its request makes quite clear, in its Connecticut example (p. 2-5),

that the purpose of longer promotions is to make its offerings virtually indistinguishable from a regional competitor's "permanent" rates. That, of course, is an obvious effort to circumvent rate averaging by the fiction that such "promotions" are different in effect from the outright deaveraging they are meant to simulate. But customers in areas that do not enjoy the extended "promotions" are nonetheless deprived of section 254 (g)'s protection. The waiver process, while not as speedy as AT&T might wish (p. 11), is the only appropriate means to evaluate whether truly unique circumstances would justify carefully limited extensions of promotional periods allowed by the Order.

The Commission Should Use its Universal Service Authority to Prevent Unfair Prejudice from Nationwide Averaging

It is true that rate averaging requires nationwide averaging by nationwide interexchange providers. In addition, AT&T has traditionally had carrier-of-last-resort obligations to serve throughout the nation, including locations where the marketplace alone would not bring about service, much less interstate services at averaged and integrated rates. Thus, since rate averaging is a universal service mechanism, AT&T would do better to ask the Joint Board convened in CC Docket No. 96-45 to remedy any legitimate problem with averaging in high cost locations by providing high cost recovery to mitigate the high access charges it incurrs by averaging to include rural areas on a nationwide basis. Rate averaging nationwide, challenged by AT&T as a competitive detriment, is exactly what Congress intended by section 252(g).[6] It would make no sense to repeal this just-enacted statutory mandate because of the "enormous

[6]See quotation on page 3, above.

range of access charges imposed by hundreds of LECs."[7] The reasonable remedy, consistent with the Act, for this admitted concern is bulk billing or universal service treatment for the high traffic sensitive costs in rural areas that cause these serious disparities.

Forbearance Requests Require Prompt Commission Action

The Commission should promptly reject AT&T's requests for reconsideration and forbearance. Given the provision in section 10(c) that failure to act on a forbearance petition within a one-year period amounts to an automatic grant, lengthy Commission inaction may in itself violate section 254(g). The Commission must not flout the averaging requirement Congress enacted by inadvertantly or deliberately delayed action. Here, plainly, justice delayed would be justice denied. Prompt action will, in contrast, honor the statute's plain language and the Congressional intent of Section 252 (g).

Legitimate Separate Affiliates Are Not a Single Carrier or Provider, but Manipulation is Unacceptable

GTE and U.S. West request clarification that their fully separated, but affiliated, interexchange companies with separate operations need not average or integrate their rates across corporate boundaries. The RTC agrees that legitimate separate carriers and operations should not be lumped together unless the law specifically so states. That is not the case here.

However, the Commission should prohibit manipulation of corporate boundaries to exploit this valid distinction. For example, an AT&T reorganization into separate regional

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[7]AT&T at 6. Moreover the access charge subsidies of which AT&T complains (p. 6) will be reviewed and adjusted to meet the "explicit" subsidy requirement of the Act in the near future. They cannot be grounds for forbearance or otherwise gutting section 254(g). AT&T's conclusionary claim (ibid.) that LECs are cross-subsidizing their long distance service is wholly unsupported and, even if it were true, would be subject to administrative or judicial remedy. See, e.g., § 254 (k).

interexchange affiliates should not be allowed to accomplish regional deaveraging. Nor should separate subsidiaries justify abandoning rate integration to traditionally integrated points like Alaska and Hawaii. The Commission should, consequently, (1) forbid such manipulation and (2) provide for expedited complaint processing when efforts to deaverage or reduce rate integration by this subterfuge are alleged.

Conclusion

For the above reasons, the Commission should deny AT&T's request for reconsideration and forbearance and attach appropriate safeguards to the separate subsidiary clarification requested by GTE and U.S. West.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Weldrena Jones-Bean, do hereby certify that true copies of the foregoing "Rural Telephone Coalition (RTC) Opposition to Petition for Reconsideration", have been served this 21st day of October, 1996, by United States mail, first class, postage prepaid, upon the parties on the Service List below.

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